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WM. H. STANSE

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IN THE SUPREME COURT OF THE UNITED STATES

**James C. Davis, as Director General of Railroads, and
Agent under Section 206 "Transportation Act 1920,"
Petitioner.**

vs.

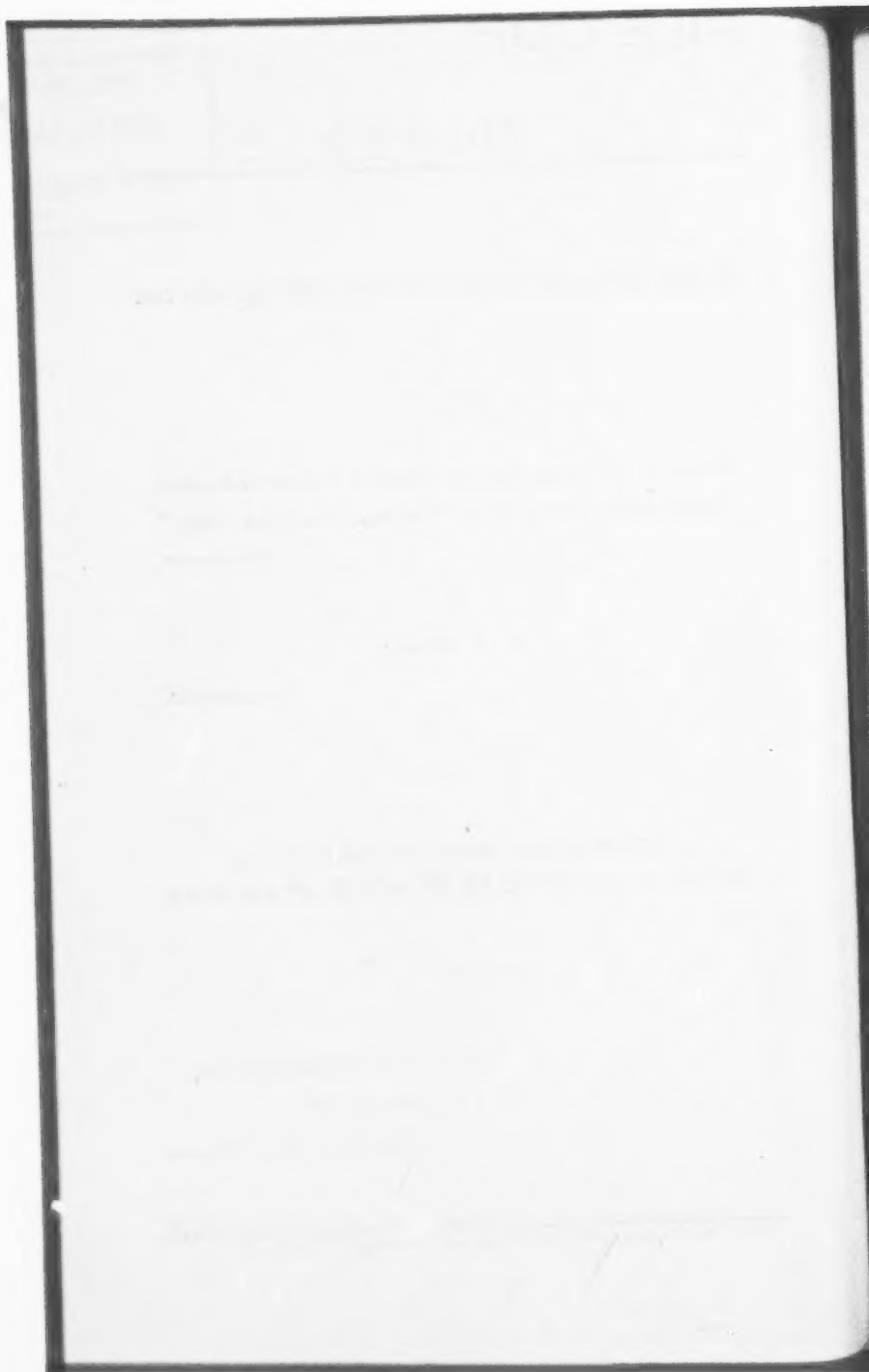
A. E. Manry,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO COURT OF APPEALS OF STATE OF GEORGIA**

✓ **T. M. CUNNINGHAM, JR.,**
✓ **I. J. HOFMAYER,**

Attorneys for Petitioner.



IN THE SUPREME COURT OF THE UNITED STATES

**James C. Davis, as Director General of Railroads, and
Agent under Section 206 "Transportation Act 1920,"
Petitioner.**

vs.

**A. E. Manry,
Respondent.**

**TO THE HONORABLE THE SUPREME COURT OF
THE UNITED STATES:**

The petition of James C. Davis, as Director General of Railroads and as Agent under Section 206 of "Transportation Act 1920," respectfully shows:

1. The Respondent, A. E. Manry, brought an action against the Predecessor of Petitioner, in the Superior Court of Lee County, Georgia, for damages for personal injuries, and recovered a judgment for \$7,500.00, which was affirmed by the Court of Appeals of the State of Georgia, April 18th, 1923. The Supreme Court of Georgia on May 30th, 1923, denied a petition for certiorari in said case, so that the decision of the Court of Appeals of the State of Georgia is a final judgment of the highest Court of the State of Georgia in which a decision could be had.

2. The case arose under the Federal Employers Liability Act and turned on the construction of Section 2 of the Safety Appliance Act of April 14th, 1910 (36 Stat. 298; U. S. Comp. Stat. § 8618) the material portion of which is as follows:

“All cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders.”

3. Manry had walked over the top of the tender attached to an engine and was about to descend a ladder on the rear of the tender for the purpose of coupling the tender to a train of cars. He claims that there was no hand hold or grab iron at the top of the ladder and that the engine gave a sudden jerk and he was thrown to the ground between the tender and the train of cars and his legs were cut off.

4. The Trial Court and the Court of Appeals of the State of Georgia both decided that the defendant violated the Safety Appliance Act, in that there was no grab iron or hand hold at the top of the ladder as required by the above quoted section of said Act.

The Trial Court and the Court of Appeals of the State of Georgia both erred in so holding on the following grounds:

(a) A tender has no roof and the section of the Safety Appliance Act above quoted was intended to apply only to such cars as had roofs at the top of such ladders, and was not intended to be applicable to a tender or gondola or other open car without a roof.

(b) Section 3 of the said Safety Appliance Act provides that the Interstate Commerce Commission “Shall designate the number, dimensions, location and manner of application

of the appliances provided for by Section 2." Although the rules promulgated by the Interstate Commerce Commission prescribe with particularity the location and manner of application of the different appliances, there is no provision for grab irons or hand holds at the tops of ladders on tenders. The rule conceded by both sides to be applicable to tenders is as follows:

"A suitable metal end or side ladder shall be applied to all tanks more than forty-eight (48) inches in height, measured from top end of sill and securely fastened with bolts or rivets." (Record p. 58, 59).

This interpretation of the Act by the Interstate Commerce Commission is persuasive as to the meaning of the Act.

(c) As further bearing upon the practical interpretation put by the Interstate Commerce Commission on the said section of the Act, tenders generally are not equipped with special grab irons or hand holds at the tops of ladders (Record p. p. 51, 53), and tenders so equipped are passed by Government Inspectors (Record p. 50).

(d) Even if the Act does require hand holds or grab irons at the tops of ladders, the flange or flare on the rear of the tender and at the top of the ladder was a sufficient hand hold or grab iron, the statute providing no particular form of hand hold or grab iron.

(e) A tender and the locomotive to which it is attached does not constitute "a car" within the meaning of that clause of the Safety Appliance Act which requires hand holds or grab irons on the roofs of cars at the tops of ladders. The tender is a part of the locomotive and has no roof to which a hand hold or grab iron could be attached.

5. Petitioner shows that the question involved is one of great importance to all the railroads in the United States, in that the decision of the Court of Appeals of Georgia is contrary to the practice of railroads and contrary to the practical construction put upon the Act by the Interstate Commerce Commission; and the question involves not only the civil liability but the criminal liability of all railroads in the United States. It is important, in the interest of uniformity, that the Act should be construed by this Honorable Court.

WHEREFORE, petitioner prays that this Honorable Court will issue its writ of certiorari to the Court of Appeals of the State of Georgia that the alleged errors may be reviewed and corrected.

T. M. Cunningham
J. J. Hofmayer
 Attorneys for Petitioner.

STATE OF GEORGIA, }
 COUNTY OF CHATHAM. }

T. M. Cunningham, Jr., duly sworn says that he is Counsel for the petitioner, that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

T. M. Cunningham

Sworn to and subscribed before me this 3d day
 of August 1923.

Margaret Smith
 Notary Public, Chatham County, Georgia.

